IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1275 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIRAMJIT RAJPUT CHAUHAN & 2 - Appellant(s)
Versus
CHAMPABEN WD/O BABUJI MARVADI & 2 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1 - 3.
(MR JJ SHAH) for Defendant(s) : 1 - 2, 2.2.3, 2.2.4, 2.2.6,2.2.7
None for Defendant(s) : 2,
RULE UNSERVED for Defendant(s) : 2.2.1
NOTICE UNSERVED for Defendant(s) : 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6,2.2.7 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/01/2007

ORAL JUDGMENT

1. The learned advocate for the appellants is permitted to transpose appellant no. 3 – New India

Assurance Co. Ltd., as respondent no. 4. Mr. S.B. Parikh learned advocate states that Mr. Ajay Mehta learned advocate has instructions to appear on behalf of the insurance company and he undertakes to file VP on or before 10th January, 2007.

2. This is an appeal filed by the driver and owner of the offending vehicle who were opponents no. 1 and 2 in MACP No. 173 of 1981 filed before MACT No. 2, Ahmedabad City, The Claims Tribunal by judgment and award dated 30th June, 1983 awarded a sum of Rs.43,500=00 by way of compensation to respondents no. 1 and 3 of the present appeal. Originally, the appeal was filed by the present appellants no. 1 and 2 and also their insurance company i.e. New India Assurance Co. Ltd., as appellant no. 3. However, by order dated 8th January, 2007, the insurance company has been transposed as respondent no. 4 and now the appeal is prosecuted by respondents no. 1 and 2 with respondent no. 4 as supporting respondent.

3. On 14th October, 1981 at about 5:30 p.m., the accident in question took place. On that day, a youth aged about 20 years was proceeding from Danilimda to Ranipur on his bicycle. When he reached near Chandola Talav he was knocked down by the offending vehicle namely truck bearing registration no. GTY 3938, which was driven by appellant no. 1. It is alleged that he drove the

vehicle rashly and negligently and as a result of the same, the accident occurred. It appears from the record that the deceased died on the spot. He was a married person and on the relevant date, he was drawing salary of Rs.360/- per month. The parents and the widow of the deceased filed Claim Petition. However, during pendency of the proceedings, father Marvadi Devaji Magaji died and hence his heirs and legal representatives were brought on record. The mother of the deceased i.e. Rambhaben appeared in the proceedings in her own capacity as well as in the capacity of heir and legal representative of the deceased applicant no. 2 Devaji Magaji. The claim was made for Rs.90,250=00.

4. Though the present appellants who were opponents no. 1 and 2 before the Claims Tribunal were represented by their learned advocates, they did not file the written statement. However, the insurance company resisted the claim by filing written statement at Exh. 20. In the written statement, averments made by the claimants were denied and it was averred that the accident occurred because the deceased had lost control over his bicycle while he was trying to avoid collision with scooterist and thereby he dashed against the truck in question. According to the insurance company there was no negligence on the part of appellant no. 1.

5. Before the Tribunal, the claimants produced oral as well as documentary evidence. Several witnesses including the Doctor were examined by the claimants. As against that no evidence either oral as well as documentary was produced by the appellants and respondent no. 4, in spite of the fact that several opportunities were granted to them to do so.

6. On the basis of the material produced before it the Claims Tribunal held that the accident occurred solely due to negligence of appellant no. 1. It also reached to the conclusion that the claimants were entitled to receive compensation in the sum of Rs.43,500=00 together with interest at the rate of 6% per annum from the date of petition till realization and proportionate costs. According to the Tribunal, except the widow and the widowed mother, no other claimant was entitled to receive the compensation. The Tribunal, therefore, held that the original claimants no. 1 and 3 were jointly entitled to receive the award amount. It is against this award, the appellants have preferred this appeal.

7. I have heard Mr. R.H. Mehta learned advocate for the appellants and Mr. S. B. Parikh for Mr. Ajay Mehta for respondent no. 4 insurance company. I have also closely perused the record and proceedings of the case

and in particular, the documentary evidence. It may be noted here that other respondents who were original claimants are not present before the Court. Since notice is issued to them they returned unserved because of the incomplete address. It is stated by Mr. R.H. Mehta that considering the fact that the accident in question took place way back in the year 1981, it is difficult now to search the respondents and to give particulars about their correct and complete address. Having heard Mr. R. H. Mehta for the appellants and Mr. Parikh for respondent no. 4 and having perused oral evidence, it appears that no useful purpose will be served by issuing fresh notice to the respondents and the matter could be decided in their absence. According to Mr. R. H. Mehta the respondents seem to have file cross objections, but the record does not give any indication about it. Moreover the Registry of this Court after making every effort to trace the cross-objections has reported to the Court that there are no such cross objections available in the Registry. In that view of the matter, it appears that no useful purpose would be served by issuing fresh notice to the respondents and it also appears that at least this appeal can be disposed of on its merits in the absence of the respondents. It is also made clear that in the event of the cross-objections being placed for hearing, the appellants as well as respondent no. 4 will be entitled to contest them on merits and the present judgment will

not cause any prejudice to them.

8. So far as the issue of negligence is concerned, the Claims Tribunal has adequately discussed the issue in its judgment and has come to the conclusion that the accident occurred due to negligence of appellant no. 1. So far as this issue is concerned, the claimants have examined Dalaji Revaji at Exh, 23 and one Ramrajya Navalji at Exh. 26. They are the eye witness to the incident. According to Dalaji, the truck came from the opposite side of the deceased and it was driven on the wrong side in speed. It collided with the bicycle of the deceased. As a result of the same, he fell down and he was run over by the truck. He died on the spot. In the cross-examination it was suggested to him that the accident occurred due to the fact that the deceased tumbled and he dashed against the front portion of the truck. This suggestion is however, denied by the witness. Similar is the evidence of other eye witness. As against that appellant no. 1 has not chosen to enter the witness box and refute the case of the claimants. The Tribunal has also referred to the panchnama of the scene of the occurrence and on the basis of the contents thereof, it has reached the conclusion that the offending vehicle was driven on the wrong side of the road. I have perused this discussion closely and I do not find any error having been committed by the Tribunal. Hence, I uphold the

finding with regard to negligence of appellant no. 1.

9. So far as the quantum is concerned, the Claims Tribunal has taken into consideration the age and income of the deceased. He was aged 20 years at the relevant time and was earning Rs.360=00 per month. He had parents and wife. According to the Tribunal, the deceased would have spent around Rs.150=00 on himself and would have diverted a sum of Rs.200=00 towards the maintenance of the family. The Claims Tribunal applied multiplier of 15 and determined the loss of dependency benefit of Rs.36,000=00. It awarded a sum of Rs.7,500=00 towards the loss of expectancy of life. In all, it awarded a sum of Rs.43,500=00. In the opinion of the Tribunal, it was respondents no. 1 and 3 who were the real dependents of the deceased and, therefore, they were entitled to receive compensation. I have perused this discussion in detail. Whether the assessment of the Tribunal is just on this count, I am not entering into any details so as to avoid any prejudice being caused to the appellants and respondent no. 4 in the event of cross-objections being decided on their merits. Further suffice it to say that the amount determined by the Tribunal for loss of expectancy of life as well as dependency benefit, cannot be curtailed at all. In that view of the matter, the appellants have no case to that extent. In other words, there is no scope for this Court to interfere with the

assessment made by the Claims Tribunal and to reduce it. This appeal therefore has no merit as such.

10. The Tribunal has decided that respondents no. 1 and 3 are jointly entitled to receive compensation but in different proportion. It has, therefore, directed that respondent no. 3 i.e. Rambhaben widow of Devaji Magaji would be entitled to receive compensation of Rs.14,500=00 being one-third of the entire award amount and respondent no. 1 Champaben i.e., widow of the deceased would be entitled to receive a sum of Rs.29,000=00 being two-third of the award amount and rest of the claimants were dis-entitled to receive any compensation. It also appears from the operative portion of the judgment that they have been permitted to withdraw Rs.5,000=00 each without furnishing security and to deposit rest of the amount in Fixed Deposit for a period of seven years so far as respondent no. 3 is concerned and for a period of ten years for respondent no. 1. It is of course nothing on record to indicate whether upon maturity of the said deposit whether the respective respondents have been entrusted the amount together with interest accrued thereon. It also appears from the judgment of the Tribunal that respondent no. 1 has remarried and by placing reliance on the decision rendered in the case of **Sobha Jain & Anr., v. Bihar State Tribunal Co-operative Development Corporation Ltd., Ranchi & Ors., reported in**

1983 ACJ pg.327, it has held that she is entitled to receive compensation. On the basis of the same, the aforesaid amount is being awarded. Be that as it may, I am not inclined to discuss the merits of the said discussion. Since the accident is of the year 1981, and at that time respondent no. 3 was aged approximately 40 years, it is further clarified that if neither of the respondent is available and if the amount has not already been withdrawn, the Tribunal shall first ascertain the correct facts and entrust the entire amount to the surviving respondent. With this direction, the appeal stands dismissed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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